REGISTERED
SPEED POST

F.No.195/1004/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 21.9.15

ORDER NO. 76/2015-CX DATED 31.08.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed, under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.IND/CEX/000/289/11 dated 12.7.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Indore.

Applicant : M/s Laxmi Solvex, Dewas

Respondent : Commissioner of Customs & Central Excise, Indore.

****

ORDER

This revision application is filed by M/s Laxmi Solvex, Dewas (M.P.) (hereinafter referred to as the applicant) against Order-in-Appeal No.IND/CEX/000/289/11 dated 12.7.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Indore with respect to Order-in-Original No.R-430/2010-11/Rebate/AC dated 23.2.2011 passed by the Assistant Commissioner, Central Excise & Customs, Division-Ujjain.

2. Brief facts of the case are that:

2.1 The applicant are engaged in the manufacture & export of Soyabean Meal Extraction (D.O.Cake) falling under Chapter No.15 of the Schedule to the Central Excise Tariff Act, 1985.

2.2 The applicant had filed rebate claim for Rs.481389/- before the Adjudicating Authority for the excise duty paid on Hexane used in manufacture of Soyabean Meal which was exported in terms of Rule 18 of Central Excise Rules 2002.

2.3 The above said rebate claim was scrutinized and it was found that Applicant had not fulfilled conditions prescribed underNotification No.21/2004-CE(NT) dated 6/09/2004 issued under Rule 18 of Central Excise Rules 2002. Therefore, Show Cause Notice dated 21/12/2010 was issued by the adjudicating authority to the applicant against rebate claim filed by the applicant.

2.4 The adjudicating authority vide impugned Order-in-Original adjudicated the Show Cause Notice and rejected the rebate claim filed by the applicant.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 That the adjudicating authority is wrong in rejecting the rebate claim of the applicant.

4.2 That the adjudicating authority has failed to see that in present case there is only some procedural mistake for which substantial benefit of rebate cannot be disallowed.

4.3 That in present case the rebate claim is disallowed by the adjudicating authority on the following grounds as mentioned in discussion and finding portion of the order:-

(i) that the applicant had not exported the impugned goods on ARE, 2 application although they are registered under the Central Excise Act, 1944. As per the requirement of the Notification No.21/2004-CE(NT) dated 06.09.2004 vide para 5 thereto the goods shall be exported on the application in From ARE-2 specified in the Annexure to the Notification and the procedures specified in Notification No.19/2004-CE(NT) dated 06.09.2004 or, in Notification No.42/2001-CE(NT) dated 26.06.2001 shall be followed.

(ii) that the applicant failed to use the said ARE-2 forms for the export so was not in a position to produce the same for the above purpose in compliance to the above requirement of Notification and Department Manual. They were required to submit the original shipping bills so that the same can be used for arriving at the satisfaction about the export of the goods duly certified by the Customs Officer in lieu of the ARE 2 application. However, applicant was unable to produce such shipping bills also.

(iii) that the submission of the ARE-2 is an original proof of the export duly certified by the Customs Officer and hence the same is a material requirement and cannot be attributed to the procedural lapse; that the applicant also failed to produce the original shipping bills for necessary verification with a view to meet the requirement of the ARE-2 applications; that the facility of "H" forms is available to the exempted and unregistered units which undertakes exports directly or through merchant exporter from their Units as per Chapter 7, Part-III para 4 contained in Excise Manual (CBEC Supplementary Instructions). Hence in the case of the applicant the said facility is not available to them.

(iv) On the charge of time bar alleged in the impugned Show Cause Notice the applicant did not raise any plea; that the charge levied in the Show Cause Notice is correct. Consequently the claim of the applicant to the extent of Rs.17,901/- is time barred.

(v) that in the case of CCE Vs Indian Overseas Corporation 2009(234) ELT 0405 (H.P.), Hon'ble High Court relied upon the decision of the Apex Court in case of Mihir Textiles Ltd. vs CC 1997(92)ELT 9 (S.C.) and held thus:-

> "the law is well settled that when an assessee wants to take benefit of any rebate he must satisfy all the conditions which are necessary for availing the rebate."

4.4 In view of above applicant submitted that in present case the rebate claim is disallowed only on the ground that procedure of ARE-2 is not followed. Further part claim of Rs.17901/- is disallowed on limitation ground.

4.5 As regards not following the ARE-2 procedural applicant submitted that they have exported the goods partly through merchant exporter/Export House and partly exported directly from their factory. Since the final products of the applicant was exempted from central excise duty being tariff rate is NIL, the applicant was under impression that there is no need to issue ARE-2 Form. Applicant submitted that since their product is not excisable, they have not followed any ARE-2 procedure. The applicant was under bonafide belief that the procedure of export under rule 18/19 is required to be followed only if product is excisable. Since the DOC attracts NIL rate of duty, there is no question of payment of any excise duty. Therefore applicant has not followed any ARE-2 procedure. However applicant are having various proofs of export like their export invoice, export invoice of merchant exporter, shipping bills, bill of lading, sales tax form 'H' etc. which were already submitted alongwith the rebate claim.

4.6 That it is a settled law that if procedure of export has not been followed even then export benefit like rebate can be granted if fact of export is verifiable from other documents. In present case applicant have already submitted copy of export invoice, export invoice of merchant exporter, shipping bills, bill of lading, BRC alongwith rebate claim. All these documents can be accepted as proof of export as held in following cases:-

- Sanket Industries Ltd. 2011 (268) ELT 125 (GOI)
- Leighton Contractors (India) Pvt. Ltd 2011 (267) ELT 422 (GOI)
- MERRY VIS CCE, MUMBAI-II 2008 (226) E.L.T. 422 (TRI - MUMBAI)
- CCE, CALICUT Vs. AMBADI ENTERPRISES LTD. 2007 (219) E.L.T. 917 (TRI. - BANG.)
- MODEL BUCKETS & ATTACHMENTS (P) LTD. Vs. CCE, BELGAUM 2007 (217) E.L.T. 264 (TRI. - BANG.)
- RAJASTHAN INDUSTRIES CCE, JAIPUR 2006 (73) RLT -240

4.7 That though applicant have submitted the copy of export invoice, shipping bills and bill of lading, even otherwise the applicant has exported some of the consignment through merchant exporter. The said merchant exporter has provided to the applicant the form H of sales tax Law. The said form 'H' is a proof for export of goods by the said merchant exporter. That it is the settled law that 'H' form of sales tax department issued by the merchant exporter can be accepted as proof of export. In this context reliance is placed on the following decision:-

- KEVIN ENGG. PVT. LTD. V/S CCE, AHMEDABAD 2004 (166) E.L.T. 268 (TRI. - MUMBAI)
- BENARA BEARINGS PVT. LTD. VERSUS COLLECTOR OF CENTRAL EXCISE, KANPUR-I 1999 (105) E.L.T. 398 (TRIBUNAL)
- VAISHNOW SHOES VERSUS COMMISSIONER OF C. EX., KANPUR 1999 (106) E.L.T. 124 (TRIBUNAL)
- VADAPALANI PRESS VERSUS COMMISSIONER OF C. EX. CHENNAI 2007 (217) E.L.T. 248 (TRI. - CHENNAI) SSI

4.8 That in above cases it is clearly held by the Hon'ble Tribunal that, if AR-4 procedure is not followed even. Hence, benefit of export is to be extended if other documents are produced. The present procedure of ARE-2 is equivalent to AR-4 procedure. The applicant also provided other proof of export like 'H' form, photocopy of shipping bills and bill of lading etc. Hence benefit of export should be allowed.

4.9 That reliance is also placed on the decision of Govt. of India in case of M/s. Murti Agro Products Ltd., Nagpur reported in 2006 (200) ELT 0175 (GOI). That in this case the Revision application filed by the Commissioner of Customs and Central Excise, Nagpur was rejected and held, that:

> "On this contention Govt. would observe that there is plethora of judgments of Hon'ble Tribunal, Courts, and Govt. of India wherein it is consistently held that if export of duty paid goods is proved substantial benefit of rebate should not be denied on procedural infractions. In the instant case as discussed above the respondents have procured Central Excise duty paid input directly from manufacturer in terms ofNotification No.41/2001-CE (NT), dated 26.06.2001, and the said input has been used in manufacture of the goods exported out of India.
>
> 8. In view of above facts and circumstances Govt. finds no infirmity in the impugned Order-in-Appeal and Govt. accordingly, upholds the impugned Order-in-Appeal. The Revision Applications are, accordingly rejected.
>
> 9. So ordered."

4.10 That in another identical matter of M/s. Deesan Agro Tech. Ltd., Dhule Joint Secretary to the Government of India vide Order No. 194/09-CX dt. 27.07.2009 allowed the rebate claim of the applicant and set aside impugned Order-in-Appeal.

4.11 Even otherwise applicant submits that the vital question is whether the goods have been exported or not for the purpose of claiming export rebate on goods used in manufacture of the said exported goods. The applicant has produced related documents such as shipping bill, bill of lading etc. as a proof that the subject goods have actually been exported. It is therefore submitted that once ample proof of export is available, the claim of rebate cannot be denied on the ground that ARE-2 was not submitted.

4.12 Under the premises, applicant requested to condone this procedural lapse which happened due to un-awareness. The Hon'ble CEGAT in case of SHREEJI COLOUR CHEM. INDUSTRIES VERSUS COMMISSIONER OF C.EX.-VADODARA 2009 (233) E.L.T. 367 (TRI. - AHMD.) held that Commissioner IS empowered to allow rebate even if all or any of the conditions laid down in the Notification including production of AR-4, not complied with.

"Under the premises, applicant request to condone this procedural lapse which happened due to unawareness. The Hon'ble CEGAT in case of SHREEJI COLOUR CHEM. INDUSTRIES VERSUS COMMISSIONER OF C.EX.-VADODARA 2009 (233) E.L.T. 367 (TRI. - AHMD.) held that Export – Proof of export – Non-production of AR-4 form – Proof of export of goods by way of invoice, bill of lading and shipping bill sufficient even in absence of original AR-4 form – Absence of allegation that export not taken place – Duty demand not sustainable – Section 11 A of Central Excise Act 1944 [2003 (156) ELT 777 (Tribunal) followed]."

4.13 Further in case of Collector of Central Excise, Chandigarh Vs Kanwal Engineers 1996(87) ELT 141(Tribunal) it is held that Refund of Modvat credit earned on inputs used in export goods – Documents as to proof of export – AR4/AR4A not produced – Necessary documents like GP2, shipping bill, bill of lading, invoices, bank certificates attached to the refund claim – shipping bills can be considered as valid documents to prove the export of goods in absence of AR4/AR4A – Refund admissible.

4.14 That in following cases it is held by the Government of India that rebate can be granted even declaration of input output ratio is not filed:-

- IN RE : COMMISSIONER OF CENTRAL EXCISE, BHOPAL 2006 (205) E.L.T. 1093 (GOI)
- IN RE : COMMISSIONER OF CUS. & C. EX., NAGPUR 2006 (200) E.L.T. 175 (GOI)

4.15 Even otherwise the fact remains the same that final product has been exported by the applicant, hence rebate can be allowed after condoning such lapse. In following cases rebate claim has been allowed even compliance of filing of declaration has not been fulfilled:-

- KRISHNA FILAMENTS LTD. 2001 (131) ELT -726 (G.O.I.)
- ALLANASONS LTD. AND OTHER -1999 (81) ECR-337(GOI)

4.16 Applicant submits that it is the settled law that rebate benefit cannot be disallowed on the basis of procedural lapses. Once the fact of export is not deniable, the rebate claim cannot be disallowed merely on the basis of technical/procedural lapses. In present case the fact of export is not in dispute. All the papers/documents produced by the applicant clearly prove the export of the goods. Hence applicant submits that procedure lapses are condonable and rebate cannot be disallowed for procedural lapses. In this context reliance is placed on the following decision:-

- MODERN PROCESS PRINTERS 2006 (204) E.L.T. 632 (G.O.I.)
- BAROT EXPORTS 2006 (203) E.L.T. 321 (G.O.I.)
- CCE Vs. INDIAN OVERSEAS CORPORATION 2001 (137) ELT - 1136 (T)
- KANSAL KNITWEARS Vs. CCE, CHANDIGARH 2001 (136) ELT- 467
- NON-FERROUS TECH. DEV. CENTER 1994(71) ELT 1081
- INDO - EURO TEXTIL.ES P. LTD. 1998 (97) ELT-550

- BIRLA VXL LTD. Vs. CCE 1998 (99) ELT-387
- ALPHA Garments Vs. CCE 1996(86)ELT 600(T)
- SHANTILAL & BHANSALI 1991(53) ELT 558

Under the circumstances mentioned above, the prime conditions for the benefit under Notification i.e. export is already fulfilled. However there is certain procedure lapse due to unawareness. All the relevant documents evidencing export are already filed with the rebate claim. Further it is settled law that substantial benefit under any Notification or scheme cannot be denied just on the basis of procedure lapses. They relied upon following judgement:-

- TABLETS INDIA LTD. 2010(259) ELT 191 (MAD.)
- CCE, BHOPAL VS SIDDHARATH FOOD PRODUCTS
- GOI ORDER NO.600/2005 DATED 19.11.2005

4.17 Applicant further submits that it is the settled law that substantial benefit cannot be denied merely on the basis of procedural lapse. That in the case of Thermex Pvt. Ltd. Vs CCE 1992 (61) ELT-352 (SC) - it has been held by the Horr'ble Supreme Court that any beneficial legislation is not to be denied merely for the sake of some procedural lapses . Similar view has been taken by the Tribunal in many cases while allowing benefit under various rules/notification. Few citations are as follows:-

- COMMISSIONER OF CENTRAL EXCISE, AND CUSTOMS, SURAT VS SHRIRAM REFRIGERATION INDUSTRIES 1999 (112)ELT - 511 (T)
- LUPIN LABORATORIES LTD. VS CCE, BHOPAL 1999(113)ELT-978(T)
- JAY ENGG. WORKS LTD. VS CCE, CALCUTTA-I 2001(137)-454
- BENARA BEARINGS PVT. LTD. VS CCE, KANPUR-I 1999 (105) E.L.T. 398 (TRIBUNAL)
- ASSOCIATED CEMENT COS. LTD. VS CCE 1999(111)ELT-257
- LUPIN LABORATORIES VS CCE, INDORE 1994(71)ELT-278(T)`1
- NAGARJUNA AGRO TECH. LTD. VS CCE, HYDERABAD 2001(137)ELT-1106(T)
- SYNTHETICS & CHEMICALS LTD. VS CCE 1997(93)ELT-92(T)
- MANGALORE CHEMICALS VS UOI REPORTED IN 1991(55)ELT 437

4.18 The adjudicating authority in his order also relied the decision of Hon'ble High Court of Himachal Pradesh in case of CCE Indian Overseas Corporation 2009 (234) ELT-0405. In this context applicant submit that in the said case the export was made from the branch office of the exporter and not from the factory. Therefore rebate claim was not allowed. However in present case the export was made from the factory of the applicant. Therefore the said decision is not applicable.

4.19 Moreover it is not the case that applicant have not fulfilled all the conditions of the Notification except few minor procedural conditions and as submitted herein

above the Hon'ble Supreme Court in case of THERMAX PRIVATE LTD. Versus COLLECTOR OF CUSTOMS 1992 (61) E.L.T. 352 (S.C.) held that benefit not deniable if substantive condition of intended use as per the exemption Notification satisfied though procedural condition of Chapter X not complied with.

4.20 Similarly, the Hon'ble Supreme Court in case of COMMISSIONER OF CUS. (PRV.), AMRITSAR Versus MALWA INDUSTRIES LTD. 2009 (235) E.L.T. 214 (S.C.) held that Interpretation of Exemption Notification – Exemption Notification should be read literally - Same to be construed liberally if once it is found that Notification applicable to case of assessee -Notification like statute must be construed having regard to purpose and object it seeks to achieve, hence statutory scheme for issuance of such Notification also be considered – Exemption Notification not to be deprived 1999 (105) E.L.T. 398 (Tribunal)

4.21 That in view of the above, the order of the Commissioner (Appeals) is not sustainable and liable to be dismissed.

5. Personal hearing scheduled in this case on 09.04.2015 was attended by Shri Pradeep Asawa, Chartered Accountant on behalf of the applicant who reiterated the grounds of revision application and also made a further submission as under. Nobody attended hearing on behalf of respondent department.

5.1 Applicant submits that in present case the only allegation is that applicant have not issued ARE-2 for removal of export goods and therefore rebate is not permissible. In this context applicant submits that in present case the export products is soya meal/ DOC. The said products falls under chapter heading 2304 and is fully exempted from excise duty being NIL tariff. Therefore applicant are the manufacturer of exempted products. Applicant submits that since their final products is exempted unconditionally they are not required to follow the ARE-2 procedure.

5.2 That the CBEC has clarified that in case of export of exempted products the procedure of ARE-2 is not required and in case of export through merchant exporter the sales tax form i.e. "Form H" issued by the merchant exporter can be accepted as proof of export. That reliance is placed on Board Circular No. 648/39/2002-CX dated 25-07-2002, F.No.209/11A/2002-CX.6 wherein it is clarified in para 2 that in the case of export by exempted units through merchant exporter, the documents prescribed by Sales Tax Department, viz H-Form/ST-XXII Form or any other equivalent Sales Tax form, will be accepted as proof of export. Also relied on following ruling:

- RAJINDRA FORGE (P) LTD Vs CCE., 1999 (111) E.L.T. 74
- BENARA BEARINGS PVT. LTD. Vs CCE, KANPUR-I 1999 (105) E.L.T. 398 (Tribunal)

5.3 In view of above clarification of Board Circular and the decision of Hon'ble Tribunal it becomes clear that in case of export of exempted product the Form H can be accepted as proof of export and there is no need to issue form ARE-2/AR-4. That in present case it is the acceptable fact that goods namely DOC manufactured and exported by applicant were the exempted products, therefore applicant have not issued any ARE-2 form. Applicant therefore submits that when there was no requirement to issue ARE-2 form, the other documents can be accepted as proof of export.

5.4 Applicant therefore submit that though they have not followed any ARE-2 procedure. However applicant are having various proof of export like their Export Invoice, export invoice of merchant exporter, shipping bills, bill of lading, sales tax form 'H', export realization certificate etc. which were already submitted along with the rebate claim.

5.5 As regards non submission of original copy of shipping bills applicant submits that original copy of shipping bills were submitted to the bank . Therefore applicant have submitted certified copy of shipping bills which was certified by the bank. That along with bank certified copy of shipping bills applicant also submitted a certificate from the bank wherein it is certified that original shipping bills have been submitted to the bank as per RBI guidelines. The applicant therefore submits that since they have provided other proofs of export like H form , certified photocopy of shipping bills, Bank Realization Certificate etc., Hence substantial benefit of export rebate should not be disallowed for procedural violation.

6. Government has carefully gone through the relevant case records available in case file, oral and written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Upon perusal of records, Government observes that in the case under consideration, it is an admitted fact that goods have been cleared for export under Rule 18 of the Central Excise Rules, 2002 without following the procedure of filing ARE-2 and further rebate has been claimed without submitting original copy of Shipping Bill. The rebate claims were thus rejected by the original authority. Further, part of the claim of Rs.17901/- was rejected also on ground of limitation which has not been contested by the applicant. The Commissioner (Appeals) also rejected the appeal filed by the applicant. Now the applicant has filed this Revision Application on grounds mentioned in para 4 & 5 above.

8. Government notes that in the present case, it is an undisputed fact that the applicant, a unit registered with Central Excise, availed benefit of rebate under Rule 18 for inputs used in manufacture of goods for the purpose of export but failed to fulfill the conditions and did not follow the prescribed procedure. They

did not comply with the provisions of Notification No.21/2004- CE(NT) dated 06.09.2004 under Rule 18 ibid and failed to file ARE-2 with proper officer and also failed to submit proof of export of goods in question.

9. In reference to the above, Government first proceeds to examine the statutory position and the requirement of Form ARE-2.

9.1 Government notes that export of goods under claim for rebate on inputs used in manufacture of export goods is governed by Rule 18 of Central Excise Rules, 2002 and Notification No.21/2004-CE(NT) dated 06.09.2004 read with Chapter 7 of CBEC's Central Excise Manual and finds that ARE-2 is the basic and essential document for exports as an application for removal of goods for export under claim for rebate.

9.1.1 As per procedure prescribed in the said Notification for sealing of goods at place of dispatch, the exporter shall present the goods along with four copies of application in Form ARE-2 to the Superintendent or Inspector of Central Excise who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, he shall seal each package or container in the specified manner and endorse each copy of the ARE-2 in token of having done such examination done. The original and duplicate copies of ARE-2 shall be returned to the exporter, the quadruplicate copy shall be retained by him and the triplicate copy shall be sent to rebate sanctioning officer.

9.1.2 Where the exporter desires self-sealing, the authorized person shall certify on all copies of ARE-2 that goods have been sealed in his presence and shall send the original and duplicate copies along with the goods to place of export and the triplicate and quadruplicate copies to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of the removal of the goods.

9.1.3 At the place of export, the goods shall be presented along with the original and duplicate copies of ARE-2. Then Customs authorities upon examination of the goods shall allow export thereof and certify on the original and duplicate copies of ARE-2 that the goods have been duly exported citing the Shipping Bill number and date and return the original copy to the exporter and forward the duplicate copy to the rebate sanctioning officer.

9.1.4 For the purpose of proof of export, the exporter shall submit a monthly statement along with original copies of ARE-2 to the jurisdictional Central Excise Officer, who in turn will *inter alia* match it with the duplicate copy received from Customs and triplicate copy available with him already. The Divisional Officer shall accept proof of export or initiate necessary action in case of any discrepancy.

9.1.5 In case of non-export within six months from the date of clearance for export or any discrepancy, the exporter shall himself deposit the duty along with interest. Otherwise, necessary action can be initiated to recover excise duties along with interest and penalty.

9.1.6 A separate procedure has been laid down for declarant units i.e. those units who are within exemption limit based on value of clearance and are not registered with Central Excise. The requirements include obtaining of declarant code no. in terms of Notification No.36/2005 CE (NT) dated 26.06.2001, use of pre-authenticated invoices bearing printed serial number, declarant code no., progressive total of clearances, EXIM code etc.; filling prescribed quarterly statement; submitting proof of export to Range Officer within six months from date of clearance from factory; proof of clearance in case of exports through merchant exporters including Form H in case of goods exported directly from the unit.

9.2 In light of the above stated statutory provision, Government observes that any export clearance, intended to be made for claiming import duty rebate, will be subject to Rule 18 ibid read with Notification No.21/2004-CE (NT) dated 06.09.2004 in case of registered units and CBEC's Circular 648/39/2002 dated 25.07.2007 in case of declarant units. ARE-2 is the principle document under Notification No.21/2004-CE (NT) dated 06.09.2004 that establishes that the applicant has either followed the procedure for sealing of goods and examination of goods at place of dispatch either by Central Excise Officer or by self-sealing. In the absence of the ARE-2 and without following the procedure described above, it cannot be established that goods which were cleared from factory were the ones actually exported or that goods exported cannot be correlated with goods cleared from the factory. The submission of application for removal of export goods in ARE-2 form is must because such leniencies lead to possible fraud of claiming an alternatively available benefit which may lead to additional/double benefits.

9.3. Therefore, Government notes that nature of above requirement is both a statutory condition and mandatory in substance as an application for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.

9.3.1 It is in this spirit of this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani – (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.

9.3.2 The Hon'ble High Court of Allahabad in the case of M/s Vee Excel Drugs and Pharmaceuticals Pvt. Ltd. Vs. Union of India 2014 (305) ELT 100 (All.) has dealt with the issue of permissibility of availment of export benefit when ARE -1 not filed. It has held that ARE-1 application is the basic essential document for export. Filing of ARE-1 having been specifically contemplated under Notification issued under Rule 18 ibid, same was mandatory and not directory. Therefore, lapse in filing of ARE-1 was held as non-condonable. The ratio of this decision is squarely applicable to clearances made for export without payment of duty under Rule 19 ibid.

9.3.3 It is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd – 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

9.3.4 Further, Government in its earlier Orders 774/2011-CX dated 14.06.2011 in the case of Amira Tanna Industries Pvt. Ltd. and 871/2011-CX dated 04.07.2011 in the case of Synergy Technologies has held that preparation of statutory requirement of ARE-1 cannot be treated as a minor or technical procedural lapse for the purpose of accepting proof of export of goods as such leniencies could lead to possible fraud of claiming an alternately available benefit. The ratio of these orders is squarely applicable to the present case.

9.3.5 Government notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the Applicant seeks rebate under Notification No. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the Applicant should have ensured strict compliance of the conditions attached to the Notification No.21/2004-NT dated 06.09.2004. Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:

> "concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."

9.3.6 Government, therefore, holds that non- preparation of statutory document of ARE-2 and not following the basic procedure of export as discussed above, cannot be treated as just a minor or technical procedural lapse for the purpose of availing the benefit of rebate on the impugned goods. As such there is no force in the plea of the applicant that this lapse should be considered as a procedural lapse of technical nature which is condonable in terms of case laws cited by applicant.

9.4 Government finds that the applicant has further pleaded that the CBEC vide Circular No.648/39/2002-CE dated 25.07.2002 and CBEC's Excise Manual of Supplementary Instructions in Chapter 7, Part-III, has prescribed the simplified export procedure for exempted units wherein at serial No. 4 certain documents shall be accepted as proof of export and that Circular as well Supplementary Instructions are binding upon the department. It is observed that above referred Circular dated 25.7.2002 has been issued with reference to Part-III of Chapter 7 of CBEC's Excise Manual of Supplementary Instructions, which relates to units which are not registered with the Central Excise whereas the applicant was at the relevant time registered with the department and they were required to observe the provisions of Rule 19 of Central Excise Rules 2002 read with Notification No. 42/2001-CE (NT) dated 26.6.2001 and follow the procedure prescribed therein.

10. Government further finds that the applicant had been requested to produce original copy of Shipping Bill in the absence of ARE-2. But the applicant failed to produce the original shipping bills before adjudicating authority for necessary verification with a view to meet the requirement of the ARE-2 applications. The applicant pleaded that this is a procedural lapse on their part and rebate cannot be denied on this ground. The contention of the applicant is not acceptable as the submission of the ARE-2 is an original proof of the export duly certified by the Customs Officer and hence the same is a material requirement and cannot be attributed to the procedural lapse. Under Rule 18 of Central Excise Rules, 2002 there is no provision for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said rule.

11. Government notes that in support the applicant has cited a number of decisions. However Government finds that the decisions relied upon by them are not applicable as the facts and circumstances of the quoted cases differ from that of the applicant's case.

12. Moreover, the explanation given by the applicant that due to ignorance of law the proper procedure was not followed by them, also does not appear to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner.

This principle has been recognized and followed by the Apex Court in a catena of its judgements.

13. Government, therefore, finds that applicant had not exported the impugned goods on ARE-2 application as per the requirement of the Notification No.21/2004-CE(NT) dated 06.09.2004, although they are registered under the Central Excise Act, 1944. The procedures specified in Notification No.19/2004-CE(NT) dated 06.09.2004 and in Notification No. 42/2001-CE(NT) dated 26.06.2001 relating to removals, distribution and documents at the place of dispatch and place of export, acceptance of proof of export/filing of claim is also specified in the aforesaid Notifications have also not been followed. The applicant was required to submit the original copy of the ARE-2 duly endorsed by the Customs for the purpose of sanction of the rebate claim of the applicant. The sanctioning authority has to satisfy himself about the certificate given by the Customs Officer regarding the order for the export of the impugned goods and correlate it the fact that goods exported are the same as those cleared from the factory. The applicant failed to produce the same before Adjudicating authority. Thus, the applicant is not entitled for benefit of provisions of Notification No.21/2004-NT dated 06.09.2004, as they have failed to comply with the conditions appended to the said Notification.

14. In view of the above, Government finds no legal infirmity in the impugned Order-in-Appeal and hence upholds the same.

15. The revision application is, therefore, rejected being devoid of merit.

16. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Laxmi Solvex
(A division of Laxmi Ventures India Ltd.)
Village Durgapura, Gram Siya
Dewas (MP)

ATTESTED

(Shaukat Ali)
Under Secretary (RA)

GOI ORDER NO. 76/2015-CX DATED 31.08.2015

Copy to:-

1. Commissioner of Central Excise & Service Tax, Manik Bagh Place, P.B. No. 10, Indore-452001 (MP)
2. Commissioner (Appeals) Customs & Central Excise, Keshar Bagh Road, Indore, (MP).
3. The Assistant Commissioner of Central Excise, & Customs, Division Ujjain, Ujjain (MP)
4. PA to JS (Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED

(Shaukat Ali)
Under Secretary to the Government of India